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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------------|---------------------|------------------|
| 10/511,224   | 06/28/2005  | Laurence E. Allen III       | 10887-010US2        | 2121             |
| 26181 7590 03/03/2010<br>FISH & RICHARDSON P.C.<br>PO BOX 1022<br>MINNEAPOLIS, MN 55440-1022 |             |                             |                     |                  |
| EXAMINER<br>HAGEMAN, MARK  |             |                             |                     |                  |
| ART UNIT<br>3653   |             | PAPER NUMBER                |                     |                  |
| NOTIFICATION DATE<br>03/03/2010  |             | DELIVERY MODE<br>ELECTRONIC |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

### Office Action Summary

**Application No.**

10/511,224

**Applicant(s)**

ALLEN III ET AL.

**Examiner**

Mark Hageman

**Art Unit**

3653

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15, 16, 18-23, 25-27, 30-38, 40, 45-55, 57-60 and 63-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 16, 20, 21, 26, 30, 45-55, 57-60, 63-65 and 67 is/are allowed.
- 6) ☒ Claim(s) 18, 19, 22, 23, 25, 27, 31-38, 40, 66 and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 10-6-2009, 10-22-2009, 1-21-2010
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. As a result of the petition decision dated 1-20-2010 claims 16, 18-23, 25-27, 30-42, 54, 55, 58, and 63-68 are no longer withdrawn and are treated herein.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18, 19, 22, 23, 25, 27, 31-38, 40, 66 and 68 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 18, 19, 31-38, 40, 66, and 68 all make reference "subjecting the plastic rich mixture to the sequence of processes includes . . ." or expand on a similar limitation. These limitations render the claims indefinite as it is not clear how the claimed limitations fit within the context of claim 15 from which they directly or indirectly depend. First it is not clear if these limitations further define one of the steps (a-f) of claim 15 or add additional steps. Secondly it is not clear how these claim limitations fit into the sequence required by claim 15 as that claim requires not only a series of processes but a specific order of execution.
5. Claim 22 recites the limitation "selecting the properties" in line 1. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 23 requires repetition of one or more processes but this does not make sense given the specific order required by claim 15.

7. Claim 25 appears to add an additional step but it is not clear where sequentially in the process this step occurs.
8. The term "about" in claim 27 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The actual range of sizes for pre and post size-reduction sizes can not be determined.

***Allowable Subject Matter***

9. Claims 15, 16, 20, 21, 26, 30, 45-55, 57-60, 64, 65 and 67 allowed.
10. The following is an examiner's statement of reasons for allowance: the prior fails to anticipate or render obvious the specific combination and order of processes required by claim 15. Specifically the surface to mass control process utilizing an air table producing at least 2 fractions which are each treated separately in the subsequent step differentiates the claim from the prior art when considered in combination with the other elements required by the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Hageman whose telephone number is (571) 272-3027. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick Mackey/  
Supervisory Patent Examiner, Art  
Unit 3653

MCH